

REMARKS

A final Office Action, dated February 21, 2007, rejects pending claims 1-17, Claims 18-20 have been withdrawn as being drawn to a non-elected species. Reconsideration is respectfully requested in of the following remarks.

35 USC § 103

Applicants respectfully traverse the examiner's rejection of claims 1-17 as somehow being rendered obvious by Published Patent Application No. 2004/10036623 to Chung in view of Published Patent Application No. 2002/0180588 to Erickson. Neither of these references can be considered "prior art" against the present application.

The Erickson reference was filed on June 5, 2001 and published on December 5, 2002. In contrast the present application claims priority to U.S. Provisional Patent Application Serial Number 09/715,439 filed on November 16, 2000, nearly 6 months before the filing date of Erickson. Accordingly, Erickson cannot be considered "prior art" against the present application.

Similarly, the Chung reference was filed on October 9, 2001 and published on February 26, 2004. The Chung filing date is nearly a year after the priority date of the present application. Accordingly, it too cannot be considered prior art against the present application.

While Chung claims priority to several earlier filed provisional patent applications that were filed as early as October 11, 2000. Review of those applications reveals that the subject matter at issue in the present application wasn't added until after the priority date of the present application. Accordingly, Chung still cannot be considered "prior art" against the claims that are currently pending in the present application.

Moreover, even if Chung were valid prior art, there is no teaching or suggestion to use the system in Chung for tracking prescription orders in a pharmacy. In addition, there is no teaching or suggestion in Chung to provide a "tag having a worker signaling device thereon." If anything, the Chung Reference teaches away from such a structure by forcing a pharmacy worker to check a monitor and/or check any output from a printer to verify if an error was detected.

2. Applicants continue to traverse the examiner's reliance on "common knowledge."

"It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." MPEP Sec. 2144.03(A). "[A]n assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support." Id. (relying on Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697.)

In the present case, applicant has presented no evidence that teaches or suggests the combination of elements as currently claimed. In particular, there is no teaching or suggestion to use an automated tagged tracking system in a pharmacy, there is no teaching or suggestion to provide those tags with transducers for signaling the worker, and there is no teaching or suggestion to provide a plurality to tag-mounted transducers as currently claimed.

As stated in this section of the MPEP, before the burden shifts to the applicant to "specifically point out the supposed errors in the examiner's action, which include stating why the noticed fact is not considered to be common knowledge" (MPEP 2144.03(C)), the examiner must first provide "evidentiary support in the record" of these elements. Since the examiner has not provided such evidence, applicant is not in any position to specifically discredit that required evidence. If the examiner is able to provide such evidence, applicant will seek to "specifically point out the supposed error" with it at that time.

Should the examiner elect to continue to maintain her rejections based on these grounds, pursuant to MPEP Sec. 2144.03(C), applicants respectfully request documentary evidence to support the examiner's position on this issue. Alternatively, applicants respectfully request that the examiner's "common knowledge" assertions be withdrawn.

In view of the foregoing, applicants submit that all of the currently pending claims 1-17 are in condition for allowance, and respectfully request that the case be passed to issuance. If the Examiner has any questions, she is invited to contact applicants' attorney at the below-listed telephone number.

Respectfully submitted,

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